

AUG 04 2003

NOT FOR PUBLICATION

**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

**CATHY A. CATTERSON
U.S. COURT OF APPEALS**

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

Plaintiff - Appellee,

v.

JOHN ALEXANDER RESEARCH, INC., a
California corporation; JOHN A.
ALEXANDER, an individual,

Defendants - Appellants.

No. 02-15876

D.C. No.
CV-99-05992-OWW(LJO)

MEMORANDUM*

CALIFORNIA DEPARTMENT OF TOXIC
SUBSTANCES CONTROL,

Plaintiff - Appellee,

v.

JOHN ALEXANDER RESEARCH, INC., a
California corporation; JOHN A.
ALEXANDER, an individual,

Defendants - Appellants.

No. 02-17139

D.C. No.
CV-99-05952-OWW(LJO)

* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

Appeal from the United States District Court
for the Eastern District of California
Oliver W. Wanger, District Judge, Presiding

Argued and Submitted July 16, 2003
San Francisco, California

Before: REINHARDT, SILER,** and HAWKINS, Circuit Judges.

Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9607(a), the California Department of Toxic Substances Control (“DTSC”) is entitled to recover response costs incurred during supervision of the cleanup of a site owned and operated by John Alexander Research, Inc. and John A. Alexander (collectively “Alexander”) if not inconsistent with the National Contingency Plan (“NCP”). Consistency with the NCP is presumed. Washington State Dept. of Transp. v. Washington Natural Gas Co., Pacificorp, 59 F.3d 793, 796 (9th Cir. 1995).

Alexander has failed to show that DTSC’s response action was inconsistent with the NCP. See id. at 802. As such, DTSC is entitled to recover response costs, including overhead and attorneys’ fees incurred in pursuing recovery.

AFFIRMED.

** Honorable Eugene E. Siler, Jr., Senior United States Circuit Judge for the Sixth Circuit Court of Appeals, sitting by designation.